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Industrial Telecommunications Association, Inc.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Thomas J. Sugrue, Esq.
Chief, Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW, Room 3-C252
Washington, DC 20554

Re: Private Wireless Band Managers -- WT Docket No. 99-168

Dear Mr. Sugrue:

This letter and the accompanying attachments are intended to clarify ITA's views on the use of private wireless Band Managers in the 746-764/776-794 MHz ("700 MHz") bands.

Over the past few years, ITA and others have documented the critical spectrum shortages faced by the private wireless community. ITA believes that the 700 MHz band presents a uniquely suitable resource in response to the spectrum needs of the private wireless community because of this allocation's close proximity to the frequencies currently used by many private wireless licensees. Unfortunately, licenses for the allocation in the 700 MHz band must be issued via competitive bidding; a licensing process not suited to accommodate the widely diverse needs of private wireless users.¹

As a solution to this dilemma, ITA supports the FCC's suggestion that "Band Managers" be used to facilitate effective and efficient licensing in the requested private wireless allocation of 6 MHz in the 700 MHz bands. Under this approach, the Band Manager would bid on the spectrum and would become the FCC "licensee." The Band Manager would, in turn, make the spectrum available by contract to private users through "contractual sublease" arrangements. The Band Manager would be responsible for engineering-in private systems in a manner similar to the function currently performed by private frequency coordinators. As the licensee, the Band Manager would, however, be responsible for ensuring

¹ For a further discussion of auctions as it relates to private wireless licensees, see the Joint Comments of the Industrial Telecommunications Association, Inc., the Council of Independent Communications Suppliers, the Taxicab & Livery Communications Council, and the Telephone Maintenance Frequency Advisory Committee filed in response to the proceeding proposing to implement the Balanced Budget Act of 1997 (WT Docket 99-87).

CICS

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Communication Suppliers

TELFAC

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that the operations of these users comply with applicable eligibility, technical, and operational requirements.

This letter and the accompanying documents are intended to provide further analysis on the legal issues surrounding the Band Manager concept. Also attached is a set of proposed rules to effectuate the band manager proposal as well as a draft set of “terms and conditions” potentially defining the contractual relationship between a Band Manager and the end users.

Allocation Of 6 MHz Of Spectrum In The 746-806 MHz Band For Private Wireless Use Is Fully Consistent With Congressional Intent.

Section 337(a)(2) of the Communications Act directs the FCC to allocate 36 MHz of spectrum in the 746-806 MHz band “for commercial use to be assigned by competitive bidding pursuant to Section 309(j).”² As the Commission is aware, neither the statute itself nor the relevant conference report language specifically defines the nature of the “commercial” services eligible for this allocation.³ Also, the term “commercial use” is not defined in any part of the Communications Act.

Given the context of the legislation, however, it is plain that Congress was distinguishing this allocation from the companion 24 MHz allocation to be made available for public safety services.⁴ In particular, viewed in context, it appears that Congress intended to direct that the 36 MHz allocation be made available to a class of users broader than those qualifying as public safety services. Consistent with this interpretation, the Commission has determined that the 36 MHz allocation should be made available “to the broadest range of services.”⁵ A 6 MHz set-aside for private wireless use promotes this goal by creating an allocation suitable for private wireless operations from a technical standpoint and by recognizing the reality that private wireless users will not be able to compete effectively against commercial communications enterprises in an auction that requires these entities to bid against one another. It also responds to the Congressional mandate to consider the need to allocate spectrum for private wireless uses.⁶

Viewed in context with the relevant legislative history, the term “commercial use” encompasses the operations of the Band Manager. In particular, the activities of the Band Manager (coordinating access to spectrum, performing engineering and data base management,

² 47 U.S.C. § 337(a)(2).

³ See Reallocation of Television Channels 60-69, the 746-806 MHz Band, *Report and Order*, 12 FCC Rcd 22953, 22962 (1998) (*Report and Order*) (“Congress did not, in the Budget Act, define the term commercial services . . .”).

⁴ See 47 U.S.C. § 337(a)(1).

⁵ See *Report and Order*, 12 FCC Rcd at 22962-63 (1998) (seeking to make the 36 MHz of “commercial” spectrum in the 746-806 MHz band available to “the broadest range of services”), *recon.*, 13 FCC Rcd 21578 (1998).

⁶ H.R. Conf. Rep. No. 105-217, at 575 (1997).

and collecting fees/revenue from users) qualify as commercial activities because the Band Manager will be performing these functions on a commercial, for-profit basis.

Moreover, contrary to the claims of others, there is no indication that Congress sought to mandate that this allocation be made available only to entities that provide for-profit communications services.⁷ Had Congress intended to limit eligibility for the 36 MHz allocation to for-profit communications service providers, it would have done so by expressly referring to one of two categories of for-profit providers defined in the Communications Act. Congress could have limited eligibility for this allocation to either “tele-communications carriers”⁸ or “commercial mobile service” providers.⁹ The fact that Congress chose neither term is strong evidence that a different interpretation was intended in connection with Section 337(a)(2). The only reasonable interpretation is that Congress intended to differentiate “commercial use” for purposes of Section 337(a)(2) from the “public safety services” referred to in Section 337(a)(1).

The Band Manager Concept Is Fully Consistent With FCC Licensing Requirements.

Section 309(a) of the Communications Act requires the Commission to determine, “in the case of each application filed with it . . . whether the public interest, convenience, and necessity will be served by granting of such application”¹⁰ For the reasons that follow, the Band Manager concept does not constitute a delegation of the Commission’s Section 309(a) licensing responsibilities to the Band Manager.

Under the Band Manager proposal as currently envisioned, the FCC will be passing upon the qualifications of the licensee – *i.e.*, the Band Manager. The Band Manager’s qualifications will be reviewed in the same manner that any other applicant’s qualifications are reviewed when an FCC license is issued. The Band Manager must be eligible to bid on and hold the license in question and must have the requisite character and financial qualifications.

As the licensee, the Band Manager will be responsible for ensuring that each unlicensed third-party end user complies with all applicable FCC rules and policies. Of primary import, the Band Manager will be required to ensure, through contractual arrangements with the private wireless end users, that: (1) the entity in question satisfies all applicable eligibility requirements; (2) no interference will be caused by the operations of the third-party entity; and (3) the third-party end user will comply with all applicable FCC technical and operational rules.¹¹ As a result, the Band Manager essentially guarantees the efficacy of the third-party’s

⁷ See, e.g., FreeSpace Communications, *Ex Parte* Presentation, WT Docket No. 99-168, at 7-8 (filed Oct. 13, 1999).

⁸ 47 U.S.C. §§ 153(44), (46).

⁹ 47 U.S.C. § 332(d)(1).

¹⁰ 47 U.S.C. § 309(a).

¹¹ To ensure that end users respect the Band Manager’s obligations as a licensee, and to provide the Commission with enforcement authority that will encompass the private wireless end users, the proposal

(Continued...)

operations in much the same way that private frequency coordinators, FCC licensees, and the FCC staff do under direct FCC licensing procedures.

In addition, the FCC will retain ultimate authority to review the Band Manager's activities. In particular, the Commission will have authority to review actions of the Band Manager, either at the request of affected parties or on the Commission's own motion. The FCC will also retain authority to order the Band Manager to terminate the operations of a particular licensee if necessary. So structured, the Band Manager proposal permits the Commission's public interest obligations under Section 309(a) to be carried out in an efficient manner that allows the Commission to have ultimate authority over the use of the spectrum while obviating the need for filing and FCC processing of potentially thousands of private wireless applications. Moreover, consistent with other Commission actions granting limited authority to various types of administrative bodies, the Band Manager will not interpret Congressional intent or Commission rules or policies but rather, will merely be responsible for implementing specific limited functions ultimately reviewable by the Commission.¹²

Significantly, there is precedent for the Band Manager proposal in the Commission's existing policies governing shared use of Part 90 facilities as well as the agency's resale policies. Specifically, in accordance with the Commission's shared use policies, Part 90 licensees may share their facilities with other eligible entities.¹³ The licensee in such an arrangement is responsible for ensuring "that the authorized facility is used only by persons and only for purposes consistent with the requirements of" the Commission's Part 90 rules.¹⁴ The Commission does not pass upon the qualifications of entities sharing the licensee's radio station facilities. Likewise, the Commission does not pass upon the qualifications of resellers – including commercial resale service providers – who resell the services of facilities-based FCC licensees.¹⁵ ITA believes that the Part 90 shared use and resale examples offer valid precedent for the Band Manager proposal.

(...Continued)

contemplates contractual provisions requiring end users to accept FCC oversight and enforcement consistent with the license.

¹² See, e.g., *Changes to the Board of Directors of the National Exchange Carrier Ass'n, Inc., Federal-State Joint Board on Universal Service*, 13 FCC Rcd 25058, 25066 (1998) (FCC order on reconsideration revising the organizational structure for administering universal service support mechanisms and adopting procedures governing FCC review of USAC administrative decisions); *Report in Response to Senate Bill 1768 and Conference Report on H.R. 3579*, 13 FCC Rcd 11810, 11819 (1998) (FCC report on the administrative functions of the Universal Service Administrative Committee ("USAC")). See also *Frequency Coordination in the Private Land Mobile Radio Services*, 103 FCC 2d 1093 (1986) (establishing policies governing the functions of frequency advisory committees for private mobile radio services).

¹³ See 47 C.F.R. § 90.179.

¹⁴ 47 C.F.R. § 90.179(c).

¹⁵ Resellers classified as "telecommunications carriers" or CMRS providers are, however, subject to a number of FCC annual fee and filing requirements. Neither the Band Manager nor the third-party end users would be considered a "telecommunications carrier" or a CMRS provider because these entities would not be offering for-profit communications services.

The Band Manager concept also comports with the FCC's decision eliminating separate licensing of end users in the Specialized Mobile Radio ("SMR") service context.¹⁶ In 1992, the FCC amended its Part 90 rules to eliminate separate licensing requirements as applied to most SMR end users and, instead, permitted those end users to operate under the terms and conditions of the authorizations issued to SMR base station licensees.¹⁷ The FCC made SMR base station licensees responsible for ensuring that the operations of end users using their facilities "operate in compliance with our technical and operational rules, including those governing the location of transmitters and antennas."¹⁸ In the event of questions concerning those rules, base station licensees were encouraged to contact the FCC for assistance or to require the end user to obtain an FCC authorization prior to construction or operation.¹⁹ The Commission also recognized the duty of end users to comply with the FCC's rules and made plain that end users who violate those rules are subject to forfeitures and other administrative sanctions.²⁰ Similar policies may also be appropriate here.

The Band Manager Concept Can Be Structured To Ensure That The Relevant FCC Licensee Retains Control Of Its Licensed Facilities

The Band Manager concept can easily be structured in a way that will alleviate any concern that the proposal deprives FCC licensees of their responsibility to remain in "control" of their licensed facilities. Different tests have historically been applied in determining whether private carriers and common carriers retain sufficient *de facto* control of their licensed facilities. Under the analysis historically applied to private carriers, the licensee must not "contract away [its] control of the system."²¹ This has been interpreted to mean that the licensee must retain a bona fide proprietary interest in the system and must exercise that degree of supervision consistent with its status as a licensee.²² A more stringent test has historically been applied to common carrier licensees. That test is based on six "minimum normal incidents" of a licensee's retention of control set forth in the FCC's *Intermountain Microwave* decision.²³

¹⁶ Amendment of Part 90 of the Commission's Rules to Eliminate Separate Licensing of End Users of Specialized Mobile Radio Systems, 7 FCC Rcd 5558 (1992).

¹⁷ The Commission retained a licensing requirement only as applied to end users whose facilities fall within the scope of FAA, environmental, or "quiet zone" restrictions. *Id.* at 5559.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* at 5560.

²¹ Public Notice, 64 RR 2d 840 (1988) (Private Radio Bureau).

²² *Id.*

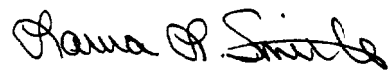
²³ *Intermountain Microwave*, 24 RR 983, 984 (1963). The six factors are: (1) Does the licensee have unfettered use of all facilities and equipment? (2) Who controls daily operations? (3) Who determines and carries out the policy decisions, including preparing and filing applications with the FCC? (4) Who is in charge of employment, supervision, and dismissal of personnel? (5) Who is in charge of the payment of financial obligations, including expenses arising out of operating? and (6) Who receives monies and profits derived from the operation of the facilities? *Id.*

The Band Manager proposal can be structured to satisfy either test. In particular, as currently proposed, the Band Manager would be the sole FCC licensee of the spectrum in question. Although the Band Manager would not be the entity operating the communications equipment used by the third-party end users, the Band Manager would, by contract, have authority to (1) access the end user's communications equipment at any time through a contact person, and (2) terminate the end user's operations. Under either the private carrier or common carrier test, these are the critical considerations as applied to the situation at hand; the other *Intermountain Microwave* criteria are tailored to the typical case where questions involving an unauthorized *de facto* transfer of control are implicated and are less relevant here, where the Commission will be well aware of the fact that third-party end users will be operating in the Band Manager's licensed spectrum.

* * * * *

ITA looks forward to continued discussion on these issues in order to help the Commission serve the private wireless user community. Please call if we can answer any questions on these matters.

Sincerely,



Laura L. Smith, Esq.
Executive Director, Government Relations

Attachments:
Proposed Rules
Contractual Terms and Conditions

INDUSTRIAL TELECOMMUNICATIONS ASSOCIATION PROPOSED SERVICE RULES - 746-764/776-794 MHz BANDS

Subpart A – General Information.

Section __.1 Purpose and Scope.

- (a) Purpose. This part states the conditions under which the 746-764 and 776-794 MHz bands are made available and licensed.
- (b) Scope. The rules in this part apply only to stations authorized under this part.

Section __.2 Permissible Communications.

Subject to the rules contained herein, fixed, mobile, and private internal radio services may be provided using the 746-764 and 776-794 MHz bands.

Section __.3 Other Applicable Rule Parts.

Other applicable rule parts to these bands include the following:

- (a) *Part 0*. This part describes the Commission's organization and delegation of authority. Part 0 of this chapter also lists available Commission publications, standards, and procedures for access to Commission records, and location of Commission Field Offices.
- (b) *Part 1*. This part includes rules of practice and procedure for license applications, adjudicatory proceedings, procedures for reconsideration and review of the Commission's actions; provisions concerning violation notices and forfeiture proceedings; competitive bidding procedures; and the environmental requirements that, if applicable, must be complied with prior to the initiation of construction.
- (c) *Part 2*. This part contains the Table of Frequency Allocations and special requirements in international regulations, recommendations, agreements, and treaties. This part also contains standards and procedures concerning the marketing and importation of radio frequency devices, and for obtaining equipment authorization.
- (d) *Part 5*. This part contains rules prescribing the manner in which parts of the radio frequency spectrum may be available for experimentation.
- (e) *Part 17*. This part contains requirements for construction, marking, and lighting of antenna towers.
- (f) *Part 20*. This part contains the requirements and conditions applicable to commercial mobile radio service providers.
- (g) *Part 22*. This part establishes the requirements and conditions under which common carrier radio stations may be licensed and used in the public mobile services.
- (h) *Part 51*. This part contains general duties of telecommunications carriers to provide for interconnection with other telecommunications carriers.
- (i) *Part 90*. This part contains the conditions under which radio communications systems may be licensed and used in the Public Safety, Special Emergency, Industrial, Land Transportation, and Radiolocation Radio Services.

Section __.4 Terms and Definitions.

Assigned Frequency. The center of the frequency band assigned to a station.

Authorized Bandwidth. The maximum width of the band frequencies permitted to be used by a station. This is normally considered to be the necessary or occupied bandwidth, whichever is greater.

Average Terrain. The average elevation of terrain between 3 and 16 kilometers from the antenna site.

Band Manager. An entity which is allowed to bid on licenses within the 746-747.5/776-777.5 MHz and 762.5-764/792.5-794 MHz bands solely for the purpose of providing access to spectrum for private internal radio services.

Effective Radiated Power (ERP). The product of the power supplied to the antenna and its gain relative to a half-wave dipole in a given direction.

Equivalent Isotropically Radiated Power (EIRP). The product of the power supplied to the antenna and the antenna gain in a given direction relative to an isotropic antenna.

Fixed Service. A radio communication service between specified fixed points.

Fixed Station. A station in the fixed service.

Land Mobile Service. A mobile service between base stations and land mobile stations, or between land mobile stations.

Land Mobile Station. A mobile station in the land mobile service capable of surface movement within the geographic limits of a country or continent.

Land Station. A station in the mobile service not intended to be used while in motion.

Mobile Service. A radio communication between mobile and land stations, or between mobile stations.

Mobile Station. A station in the mobile service intended to be used while in motion or during halts at specified points.

Private Internal Radio Services. Those services which are offered solely to meet the internal wireless communications needs of a licensee eligible to be licensed in the Private Mobile Radio Services defined in Part 90 of the FCC's Rules; or those services offered by a third party provider that owns, operates, and/or manages an infrastructure of telecommunications equipment and customer premises equipment that is used solely for the purpose of meeting the internal communications needs of a licensee eligible to be licensed in the Private Mobile Radio

Services defined in Part 90 of the FCC's Rules but whose infrastructure is not interconnected to the public switched network.

Private Internal Radio Service Providers. Those entities which own and operate a wireless telecommunications system solely to meet their internal wireless communications needs; or an entity which owns, operates, and/or manages an infrastructure of telecommunications equipment and customer premises equipment that is used solely to meet the internal communications needs of a private wireless entity but whose infrastructure is not interconnected to the public switched network.

Section __.5 Frequencies.

The following frequencies are available for fixed and mobile services:

- (a) *747.5-762.5/777.5-792.5 MHz Band.* [Insert number] paired channel blocks are available for assignment on a Major Economic Area basis for fixed and mobile services as follows:
- (b) *746-747.5/776-777.5 MHz:* A paired channel block available for licensing on a Major Economic Area basis to a band manager for private internal radio services.
- (c) *762.5-764/792.5-794 MHz Band.* A paired channel block available for licensing on a Nationwide basis to band managers for private internal radio services.

Section __.6 Service Areas.

Major Economic Areas (MEAs) are based on the U.S. Department of Commerce's 172 Economic Areas (EAs). *See* 60 Federal Register 13,114 (March 10, 1995). In addition, the Commission shall separately license Guam and the Northern Mariana Islands, Puerto Rico and the United States Virgin Islands, American Samoa, and the Gulf of Mexico, which has been assigned Commission-created EA numbers 173-176 respectively. The nationwide license described in Section __.5(b) covers all 176 EAs.

Subpart B – Applications and Licenses.

Section __.7 Initial Applications.

- (a) An applicant must file an application for an initial license in the 746-764 and 776-794 MHz band for each market and channel block desired. Applicants are permitted to list all markets and channel blocks in a single application where all requisite exhibits and justifications are identical.
- (b) The initial authorization shall be granted for [enter size of commercial license in MHz] in accordance with Section __.5(a).
- (c) The initial authorization for the band managers shall be granted for 3 MHz of spectrum for Blocks A and B in accordance with Sections __.5(b) and __.5(c).

- (d) Authorizations will be based on Major Economic Areas (MEAs), as shown in Section __.6 except for the nationwide license described in __.5(b).
- (e) Applications for individual sites are not required and will not be accepted.

Section __.8 Eligibility.

- (a) **Eligibility for frequencies 747.5-762.5/777.5-792.5 MHz.** Any entity, other than those precluded by Section 310 of the Communications Act, is eligible to hold a license for frequencies in the 747.5-762.5/777.5-792.5 MHz band in accordance with Section __.5(a).
- (b) **Eligibility for frequencies 746-747.5/776-777.5 and 762.5-764/792.5-794 MHz.** An entity willing to bid on licenses within these frequencies for the sole purpose of providing access to spectrum for private internal radio systems will be known as a band manager and will be eligible to hold a license for frequencies 746-747.5/776-777.5 and 762.5-764/792.5-794 MHz Band, in accordance with Sections __.5(b) and __.5(c). The band manager will be subject to the following conditions:
 - (1) A band manager must make its authorized spectrum available only to entities eligible under Subparts B, C, D, or E of Part 90 of the Commission's Rules for private internal radio use.
 - (2) A band manager is prohibited from owning, constructing, or operating communications facilities or infrastructure in the 746-747.5/776-777.5 and 762.5-764/792.5-794 MHz bands.

Section __.9 License Period.

Initial authorizations will have a term not to exceed ten years from the date of original issuance or renewal.

Section __.10 Construction Requirements.

To the extent that they are not precluded by incumbent broadcast facilities, licensees must make a showing of "substantial service" in their license area within ten years of being licensed. "Substantial service" is defined as service which is sound, favorable, and substantially above a level of mediocre service which just might minimally warrant renewal. Failure by any licensee to meet this requirement will result in forfeiture of the license and the licensee will be ineligible to regain it.

Section __.11 Renewal of License.

- (a) An existing licensee involved in a renewal proceeding shall receive a preference, commonly referred to as a renewal expectancy, if its past record for the relevant license period demonstrates that:
 - (1) the renewal applicant has provided "substantial service" during its part license term;
 - and

- (2) the renewal applicant has substantially complied with applicable FCC rules, policies, and the Communications Act of 1934, as amended.
- (b) Except for band managers, in order to establish its right to a renewal expectancy, the renewal applicant must submit a showing explaining why it should receive a renewal expectancy. At a minimum, this showing must include:
 - (1) A description of its current service; and
 - (2) An explanation of its record of expansion, including a timetable of new construction to meet changes in demand for service.
- (c) In the case of a band manager, the renewal applicant must submit a showing demonstrating the number of entities using the spectrum for private internal radio use.

Section __.12 Geographic Partitioning and Spectrum Disaggregation.

(a) Eligibility.

- (1) *Frequencies 747.5-762.5/777.5-792.5 MHz.* Licensees for these frequencies may apply to partition their licensed geographic service area or disaggregate their licensed spectrum at any time following the grant of their licenses. Parties seeking approval for partitioning or disaggregation of these frequencies shall request from the Commission an authorization for partial assignment of a license.
- (2) *Frequencies 746-747.5/776-777.5 MHz and 762.5-764/792.5-794 MHz.* Licensees for these frequencies may disaggregate or partition their license only to parties eligible to hold the initial license as described in Section __.8(b). Band managers may disaggregate or partition their license only to parties eligible to be band managers and the new licensees must comply with all obligations of a band manager as described in this part.

(b) Technical Standards.

- (1) *Partitioning.* In the case of partitioning, requests for authorization for partial assignment of a license must include a description of the partitioned service area and a calculation of the population of the partitioned service area and the licensed geographic service area. The partitioned service area shall be defined by coordinate points at every 3 degrees along the partitioned service area unless an FCC recognized service area is utilized or county lines are followed. The geographic coordinates must be specified in degrees, minutes, and seconds to the nearest second of latitude and longitude and must be based upon the 1927 North American Datum (NAD27).
- (2) *Disaggregation.* Spectrum may be disaggregated in any amount.
- (3) *Combinations.* The Commission will consider requests for partial assignment of licenses that propose combinations of partitioning and disaggregation.

Section __.13 Band Manager Responsibilities.

- (a) Consistent with its fundamental obligation to provide access to its licensed spectrum for private internal radio services, band managers shall enter into private contractual

relationships with the ultimate end users of this spectrum. The terms of these contracts must ensure that:

- (1) systems operating under the terms of a band manager license limit their operations to private internal radio service as defined and interpreted by the Commission. Commercial Mobile Radio Service operations are not permitted in the spectrum licensed to a band manager.
- (2) the end users are eligible to be licensed in the Private Mobile Radio Services defined in Part 90 of the FCC's Rules.
- (3) the band manager has the ability to immediately suspend or terminate the operations of any transmitting facility if that facility is causing unlawful harmful interference. The FCC must have access to any facility operating under the terms of a band manager license.
- (4) the transmitting facilities abide by any relevant FCC rule concerning effective radiated power, antenna height, and out-of-band emissions. The construction of any antenna towers must comply with relevant FCC and FAA regulations.

(b) Band managers shall maintain and make available to the Commission upon request a report detailing its contractual arrangements with users to access its licensed spectrum. These reports shall identify the end user including a point of contact, discuss their eligibility status in the Private Internal Radio Services, and define the relevant technical parameters of the transmitting facility including location and operating power.

INDUSTRIAL TELECOMMUNICATIONS ASSOCIATION

TERMS AND CONDITIONS BAND MANAGER AND PRIVATE WIRELESS SPECTRUM LESSEES UNDER THE 700 MHz BAND MANAGER PROPOSAL

OBJECTIVES

The band manager(s) will obtain their licenses through the competitive bidding process, pursuant to § 337(a)(2) of the Communications Act and FCC regulations adopted in WT Docket No. 99-168, and contractually provide rights to use the spectrum to end user(Users) operating private internal radio radio systems.

The band manager(s) will execute agreements with entities interested in utilizing the spectrum. These contracts will cover the following matters.

TERMS AND CONDITIONS

- ▶ The band manager will contractually provide users the right to use certain frequencies in the band manager's spectrum. The specific frequencies will be identified in the contract. Users will be charged fees based on operational parameters such as coverage, technology, bandwidth and site location.
- ▶ The agreements may be structured for varying terms; however, no agreement term shall extend beyond the term of the band manager's FCC authorization. If the band manager is able to renew its authorization on similar terms and conditions with the Federal Communications Commission (FCC or Commission), the user will be entitled to renew its agreement with the band manager.
- ▶ The operational details of the user's system will be provided in the contract, including power, maximum antenna heights, frequencies of operation, base station location(s), area(s) of operation, and other parameters as appropriate. The band manager, or its designated representative, will perform any necessary frequency coordination to avoid harmful interference with other existing users of the band manager's spectrum or existing users of other spectrum bands, including incumbent broadcast systems and adjacent channel commercial and public-safety installations.
- ▶ The user must certify that it will operate its system in compliance with all applicable FCC rules. If the band manager determines that the system can operate without causing harmful interference to others, then the band manager will so notify the user in writing, and the contract will be deemed approved. The user will then be responsible for any coordination fees associated with this

determination. If the band manager determines that the system cannot operate within the band manager's spectrum, the band manager will so notify the user in writing, and the contract will be deemed null and void. In this case, the user will not be responsible for payment of the coordination fees.

- ▶ Subsequent frequency coordination, spectrum monitoring and interference resolution with other licensees may be required to ensure operation of the user's system consistent with the band manager's authorization. The band manager, or its designated representative, will be responsible for performing these activities and will bill the user accordingly as set forth in the contract.
- ▶ Before a system is activated, the user will notify the band manager in writing. In addition, if the user deactivates the system for more than 30 consecutive days, the user will notify the band manager in writing. When the user reactivates the system, the user will again notify the band manager in writing.
- ▶ The contract, including the technical specifications of the user's system, may only be modified by agreement of the band manager and the user in writing.
- ▶ The user must comply with all Commission and band manager rules. The operation of the user's system must comply with all technical specifications for the system contained within the contract and must use FCC-approved equipment where relevant.
- ▶ In the event that there is a dispute between the user and the band manager regarding compliance with FCC rules or any other issue, the user and the band manager will first attempt to resolve the dispute through the band manager's mediation procedures. If the dispute is not resolved within (XX) months, the parties will then proceed to binding arbitration under AAA rules.
- ▶ The user must certify its acknowledgment that the FCC will retain its enforcement powers defined in the Communications Act and the FCC's Rules over the user's transmitting facilities. The user is required to cooperate fully with any investigation or inquiry conducted by either the FCC or the band manager regarding the user's use of the band manager's spectrum.
- ▶ In the event that the band manager has knowledge that the user has committed a violation of the Commission's or the band manager's rules or that the user's system is causing harmful interference with other systems inside or outside the band manager's spectrum, the band manager will have the right to conduct onsite inspections of all transmission facilities. If the band manager determines that there is an ongoing violation of the Commission's rules or that harmful interference is being caused by the user's system, the band manager has the right to deactivate the system or take other steps necessary to resolve the

interference until the situation can be remedied. If the user refuses to comply with a deactivation order, the band manager will be free to use all legal means necessary to enforce the order.

- The user will be required to indemnify the band manager for any fines or other costs associated with an FCC determination that the band manager has violated any FCC rules as a result of the user's conduct.
- Upon 30 days notice, the user will have the right to terminate the contract upon payment of a fee based on the amount of time remaining on the user's lease.

OUTSTANDING ISSUE

If the FCC subjects the band manager to build-out requirements, the following provision should also be incorporated within the contract:

The user is required to complete construction of its system within (XX) months. If the user fails to comply with construction requirements, the band manager may, upon ten (10) days written notice, terminate the lease, and the user will be subject to a termination fee.